

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 196

BY REVENUE AND TAXATION COMMITTEE

AN ACT

RELATING TO TAXATION OF CIGARETTES SOLD ON INDIAN RESERVATIONS IN IDAHO;  
PROVIDING LEGISLATIVE FINDINGS; AMENDING SECTION 63-2506, IDAHO CODE,  
TO PROVIDE THE LEGAL INCIDENCE OF THE CIGARETTE TAX IMPOSED BY CERTAIN  
SECTIONS OF IDAHO CODE IS ON THE PERSON WHO PURCHASES CIGARETTES IN  
IDAHO FROM A RETAILER; AMENDING CHAPTER 25, TITLE 63, IDAHO CODE, BY  
THE ADDITION OF A NEW SECTION 63-2506A, IDAHO CODE, TO PROVIDE FOR TAX-  
ATION OF, EXEMPTION FROM, AND CREDITS FOR SALE OF CIGARETTES ON INDIAN  
RESERVATIONS IN IDAHO; AMENDING CHAPTER 25, TITLE 63, IDAHO CODE, BY THE  
ADDITION OF A NEW SECTION 63-2506B, IDAHO CODE, TO PROVIDE FOR IMPLEMEN-  
TATION OF THE EXEMPTION FROM TAXATION PRESCRIBED BY SECTION 63-2506A,  
IDAHO CODE; AMENDING CHAPTER 25, TITLE 63, IDAHO CODE, BY THE ADDITION  
OF A NEW SECTION 63-2506C, IDAHO CODE, TO PROVIDE A DEFINITION OF INDIAN  
TRIBE AND MEMBER FOR PURPOSES OF SECTIONS OF THIS ACT; AMENDING SECTION  
39-5707, IDAHO CODE, TO PROVIDE THAT STATE CIGARETTE EXCISE TAXES ARE  
PART OF THE COSTS OF A TOBACCO PRODUCT; DECLARING AN EMERGENCY, PROVID-  
ING AN EFFECTIVE DATE AND PROVIDING APPLICATION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. LEGISLATIVE FINDINGS. The Legislature finds:

(1) The decision of the Supreme Court of Idaho in Mahoney v. Idaho State  
Tax Commission, 96 Idaho 59 (1973), which held that the Commerce Clause of  
the United States Constitution forbade the state of Idaho from imposing an  
excise tax upon the on-reservation sale of cigarettes, has been superseded  
and implicitly overruled by the decision of the Supreme Court of the United  
States in Washington v. Confederated Tribes of the Colville Indian Reserva-  
tion, 447 U.S. 134 (1980), which upheld the state of Washington's imposition  
of a tax upon on-reservation sale to persons who are not enrolled members of  
that reservation's federally recognized tribe.

(2) It is in the public interest to extend the imposition of and col-  
lection of Idaho's cigarette tax to on-reservation sales that the state of  
Idaho may constitutionally tax in order to increase revenues available to  
the state of Idaho, so that those revenues may be used to fund state pro-  
grams, including, but not limited to, health-related expenses caused by cig-  
arettes. Placing the incidence of the tax on the consumer furthers the pub-  
lic interest by aligning health-related expenses caused by cigarettes with  
the user of the product.

(3) It is the policy of this Act to impose a system of state cigarette  
excise taxation with credits for tribal cigarette taxation that is cost-neu-  
tral between cigarettes sold on Indian reservations to non-tribal members  
and cigarettes sold by non-reservation vendors to the general public (and  
that otherwise exercises state taxation authority as fully as possible under  
the United States and Idaho Constitutions).

1 (4) It is the policy of this Act to preserve an exemption from cigarette  
 2 excise taxation of sales by on-reservation vendors to enrolled tribal mem-  
 3 bers on that reservation through one of two mechanisms:

4 (a) Detailed recordkeeping of all such sales; or

5 (b) At a tribe's election, using a State Tax Commission estimate of such  
 6 sales.

7 SECTION 2. That Section 63-2506, Idaho Code, be, and the same is hereby  
 8 amended to read as follows:

9 63-2506. IMPOSITION OF TAX. (1) On and after July 1, 2005, a tax upon  
 10 the purchase, storage, use, consumption, handling, distribution or whole-  
 11 sale sale of cigarettes is hereby imposed at the rate of fifty-seven cents  
 12 (57¢) per package of twenty (20) cigarettes, which tax shall be paid by the  
 13 wholesaler, and collected by the state tax commission. 5.1746¢ of the tax  
 14 collected per package of twenty (20) cigarettes shall be subject to appro-  
 15 priation to the public school income fund to be utilized to facilitate and  
 16 provide substance abuse programs in the public school system. 5.1746¢ of the  
 17 tax collected per package of twenty (20) cigarettes shall be subject to ap-  
 18 propriation to the department of juvenile corrections for distribution to  
 19 the counties to be utilized for county juvenile probation services.

20 (2) Appropriated funds shall be distributed quarterly to the counties  
 21 based upon the percentage the population of the county bears to the popula-  
 22 tion of the state as a whole.

23 (3) The remaining moneys collected and those moneys not appropriated  
 24 under the provisions of this section shall be distributed as specified in  
 25 section 63-2520, Idaho Code.

26 (4) Legal incidence of tax. The legal incidence of the tax imposed by  
 27 this section and section 63-2506A, Idaho Code, is on the person who purchases  
 28 cigarettes in Idaho from a retailer.

29 SECTION 3. That Chapter 25, Title 63, Idaho Code, be, and the same is  
 30 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
 31 ignated as Section 63-2506A, Idaho Code, and to read as follows:

32 63-2506A. TAXATION OF CIGARETTES SOLD ON INDIAN RESERVATIONS -- EX-  
 33 EMPTIONS -- CREDITS -- LEGAL INCIDENCE OF TAX. (1) Imposition of tax. Except  
 34 as otherwise provided in this section, there is no exemption from the tax  
 35 imposed by section 63-2506, Idaho Code, upon cigarettes purchased, stored,  
 36 used, consumed, handled, distributed or sold at wholesale for cigarettes  
 37 that are shipped to or delivered onto Indian reservations in the state of  
 38 Idaho. The tax prescribed by section 63-2506, Idaho Code, is hereby imposed  
 39 on all cigarettes shipped to or delivered onto Indian reservations in the  
 40 state of Idaho by persons subject to the tax under section 63-2506, Idaho  
 41 Code.

42 (2) Exemption. Cigarettes purchased from a retailer by an enrolled  
 43 member of a federally recognized Indian tribe on his own tribe's reservation  
 44 are exempt from taxation imposed by section 63-2506, Idaho Code, and by this  
 45 section. A credit for and/or a refund of any such taxes previously paid  
 46 on those cigarettes may be claimed as provided in section 63-2506B, Idaho  
 47 Code. It shall be a rebuttable presumption that purchases of no more than

1 one hundred (100) cartons of cigarettes in a calendar year by an individual  
 2 are retail purchases and that purchases exceeding that amount are not retail  
 3 purchases. No credit or refund shall be allowed for purchases that are not  
 4 retail purchases.

5 (3) Credit for tribal taxes. The tax imposed by section 63-2506, Idaho  
 6 Code, and by this section shall be subject to a credit for any excise tax  
 7 on cigarettes imposed by an Indian tribe upon the same persons who are li-  
 8 able for the tax under section 63-2506, Idaho Code. The credit shall be in  
 9 an amount not to exceed the tribal tax on the cigarettes; provided however,  
 10 the credit shall not exceed the rate of tax imposed by section 63-2506, Idaho  
 11 Code. The credit may be claimed by the person who affixed the state cigarette  
 12 excise tax stamp, pursuant to section 63-2508, Idaho Code. The state tax  
 13 commission may by rule require necessary recordkeeping to claim the credit  
 14 and may prescribe forms for claiming the credit. No credit shall be allowed  
 15 under this subsection without proof of payment of the tax to a tribal govern-  
 16 ment as prescribed by rule of the state tax commission.

17 SECTION 4. That Chapter 25, Title 63, Idaho Code, be, and the same is  
 18 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
 19 ignated as Section 63-2506B, Idaho Code, and to read as follows:

20 63-2506B. IMPLEMENTATION OF EXEMPTION. (1) Exemption. The exemption  
 21 from taxation provided by section 63-2506A(2), Idaho Code, may be imple-  
 22 mented in one (1) of the alternative manners prescribed by this section.

23 (2) Exemption claimed on basis of individual recordkeeping. The state  
 24 tax commission shall promulgate rules to determine what recordkeeping shall  
 25 be required to document an enrolled tribal member's exemption from taxation  
 26 provided in section 63-2506A(2), Idaho Code, and to quantify the tax asso-  
 27 ciated with such sales, net of any credit provided by section 63-2506A(3),  
 28 Idaho Code. Upon satisfactory proof of purchase of cigarettes exempt from  
 29 taxation under section 63-2506A(2), Idaho Code, in accordance with rules  
 30 promulgated by the state tax commission, any enrolled member of an Idaho  
 31 tribe who purchased cigarettes in Idaho at retail on his own tribe's reser-  
 32 vation is entitled to and may apply for a credit and/or refund in the amount  
 33 of taxes levied on those cigarettes pursuant to section 63-2506, Idaho Code,  
 34 net of any credit provided by section 63-2506A(3), Idaho Code, against any  
 35 taxes due from the individual to the state tax commission and/or a refund of  
 36 the amount exceeding any taxes due. This credit and/or refund may be claimed  
 37 annually. The state tax commission shall prescribe forms for individual  
 38 enrolled members of the Indian tribe to claim the credit. The credit and/or  
 39 refund shall not exceed the tax imposed by section 63-2506, Idaho Code,  
 40 on cigarettes purchased at retail, net of any credit provided by section  
 41 63-2506A(3), Idaho Code.

42 (3) Exemption estimated. In lieu of keeping the records upon which an  
 43 individual refund may be calculated pursuant to section (2) of this section,  
 44 an Indian tribe may elect on behalf of itself and its enrolled members to es-  
 45 timate the on-reservation sales to enrolled members of the tribe according  
 46 to a statewide estimate of average adult cigarette consumption. The elec-  
 47 tion must be received in writing from the Indian tribe by the state tax com-  
 48 mission no later than the last day preceding the start of any quarter in which

1 the Indian tribe first elects to exercise its option under this section. To  
2 make this estimate, the state tax commission shall:

3 (a) Determine from the United States census bureau's most recently pub-  
4 lished estimate or actual enumeration of Idaho's population the number  
5 of persons who were Idaho residents eighteen (18) years of age or older  
6 during the preceding calendar year (or the most recent calendar year for  
7 which such data are available, if the data are not available for the pre-  
8 ceding calendar year), which shall be known as the Idaho adult popula-  
9 tion;

10 (b) Determine the total volume of cigarettes upon which taxes were im-  
11 posed pursuant to section 63-2506, Idaho Code, in the preceding calen-  
12 dar year, which shall be known as the Idaho volume;

13 (c) Divide the Idaho volume by the Idaho adult population to obtain an  
14 estimate of Idaho per-capita adult consumption of cigarettes, which  
15 shall be known as the Idaho cigarette average;

16 (d) Round the Idaho cigarette average up to the nearest whole number di-  
17 visible by two hundred (200), which shall be known as the Idaho carton  
18 average;

19 (e) Multiply the Idaho carton average by the number of enrolled mem-  
20 bers of the Indian tribe certified by such Indian tribe as being eigh-  
21 teen (18) years or older and living on-reservation in Idaho in the pre-  
22 vious calendar year, which shall be known as the tribal carton volume;  
23 and

24 (f) Calculate the total credit by multiplying the tribal carton vol-  
25 ume by taxes associated with that volume of cigarettes that were taxed  
26 at the rate prescribed by section 63-2506, Idaho Code, net of any cred-  
27 its for tribal cigarette taxes recognized by section 63-2506A(3), Idaho  
28 Code.

29 An Indian tribe that has elected to claim this exemption on behalf of itself  
30 and its enrolled members shall be entitled to claim a refund in the amount of  
31 the exemption on a quarterly basis. The state tax commission may by rule pre-  
32 scribe procedures for applying for and documenting entitlement to this ex-  
33 emption and refund.

34 SECTION 5. That Chapter 25, Title 63, Idaho Code, be, and the same is  
35 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
36 ignated as Section 63-2506C, Idaho Code, and to read as follows:

37 63-2506C. INDIAN TRIBE AND MEMBER DEFINED. For purposes of sections  
38 63-2506A and 63-2506B, Idaho Code, "Indian tribe" means any federally recog-  
39 nized Indian tribe with a reservation contained partially or wholly within  
40 Idaho, provided that for any Indian tribe whose reservation is located par-  
41 tially in Idaho, sections 63-2506A(1) and (3), Idaho Code, shall apply only  
42 to cigarettes shipped to or delivered to a part of the reservation within  
43 Idaho, and section 63-2506A(2), Idaho Code, shall apply only to retail pur-  
44 chases of cigarettes within Idaho. "Enrolled member" of an Indian tribe  
45 means any member of the Indian tribe as shown by the Indian tribe's official  
46 records.

47 SECTION 6. That Section 39-5707, Idaho Code, be, and the same is hereby  
48 amended to read as follows:

1        39-5707. OPENED PACKAGES AND SAMPLES. (1) It shall be unlawful to sell  
2 or distribute tobacco products for commercial purposes other than in the  
3 federally required sealed package provided by the manufacturer with all the  
4 required warning labels and health warnings.

5        (2) It shall be unlawful to sell or distribute tobacco products for free  
6 or below the cost of such products to the sellers or distributors of the prod-  
7 ucts for commercial or promotional purposes, to members of the general pub-  
8 lic in public places or at public events. For purposes of this subsection,  
9 "cost" shall include the applicable state cigarette excise tax.

10        SECTION 7. An emergency existing therefor, which emergency is hereby  
11 declared to exist, this act shall be in full force and effect on and after  
12 passage and approval. At any time after approval of this act, the state tax  
13 commission shall have authority to promulgate temporary rules to implement  
14 this act without compliance with section 67-5226(1) and (2), Idaho Code,  
15 which rules shall become effective on July 1, 2011, and to accept certifica-  
16 tions from Indian tribes under Section 4 of this act. All other provisions of  
17 this act shall become effective on July 1, 2011.